

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6182**

**PETITION OF KURT ZIMMERMANN**  
(Hearing held February 7, 2007)

**OPINION OF THE BOARD**  
(Effective date of Opinion, April 19, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(B). The petitioner proposes the construction of an accessory structure/shed that requires a variance of 4.75 feet as it is within 0.25 of the rear lot line. The required rear lot line setback is five (5) feet.

Katherine Zimmermann, the petitioner's wife, appeared with him at the public hearing.

The subject property is Lot 15, Block 6, located at 4300 Lynbrook Drive, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00566533).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 10 x 16 foot shed.
2. The petitioner testified that at the time the subject property was purchased in September 2005, the lot had an old decrepit shed. The petitioner testified that the existing shed was unrepairable and that storage space is needed for the family's lawn and garden equipment and a bicycle. The petitioner testified that the new shed will be located in the southeast section of lot and will replace the old shed that was located in the northwest corner of the lot. See Exhibit Nos. 4 [site plan] and 7 [landscape plan].
3. The petitioner testified that he received a building permit to construct the new shed, but that after it was built received a notice of violation from the Department of Permitting Services (DPS). The petitioners

testified that their property is a trapezoidal shaped, corner lot that is heavily treed. The petitioners testified that the heavy vegetation and trees on the property eliminate many new construction options.

4. The petitioner testified that the subject property is a corner lot and must meet two front yard setbacks unlike the adjacent properties. The petitioner testified that the house is sited unusually deep on the lot, which results in both a narrow side yard and rear yard. The petitioner testified that property's existing conditions severely limit the space to construct a shed. The subject property is 7,236 square feet.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property. The Board finds that for purposes of evaluating a petition for a variance that uniqueness or peculiarity of a property does not refer to the extent of the improvements on the property or the location of the house. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995).

The Board notes that the subject property exceeds the minimum lot size for the zone and that new construction could reasonably be accommodated on the lot without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 4.75 feet from the required five (5) foot side lot line setback for the construction of an accessory structure/shed is denied.

The Board adopted the following Resolution:

On a motion by Catherine G. Titus, seconded by Donna L. Barron, with Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, and with Wendell M. Holloway in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 19th day of April, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.